IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GIUSEPPE MAURO, a single person, Petitioner/Appellant, v. BELLINGHAM RENAISSANCE I, L.L.C., a Washington limited liability company, Respondent.	)	No. 59957-7-I (Consolidated with No. 60295-1-I) DIVISION ONE Unpublished Opinion FILED: July 21, 2008

Leach, J.—Giuseppe Mauro leased two floors of a commercial building to develop a restaurant and a nightclub. When Mauro failed to pay rent for the nightclub space, the landlord sought a declaratory judgment that Mauro was obligated under the terms of the lease to pay the rent. Mauro appeals the order granting the landlord's motion for declaratory judgment and the amount of attorney fees awarded. We affirm.

Background

Giuseppe Mauro leased two floors of the old Elks Club in downtown Bellingham. He signed a commercial lease agreement for the premises with Bellingham Renaissance I, L.L.C. (BRI), on April 12, 2005.[1] Mauro's plan was to open a restaurant

in the main floor of the building and a nightclub in the basement.

The lease provided for a staggered rent payment schedule. For Phase One of the project, the main floor restaurant, no rent was due from the April signing until the opening of the restaurant or October 1, 2005, whichever was sooner. Thereafter, the rent was $5,500 per month.

For Phase Two, the basement nightclub, no rent was due until the nightclub opened or March 1, 2006, whichever was sooner. After that, the additional rent for the lower floor would be $3,500 per month. The purpose of the staggered increase in the total rent for the first year of the lease was to give Mauro time to develop the restaurant in the main floor followed by the nightclub in the lower level.

The restaurant opened on or before October 1, 2005, and Mauro began paying the required rent. The next month Mauro instructed his architect to stop all design work for the lower level. Mauro never did open a nightclub, nor did he pay rent for the lower level once it became due on March 1, 2006.

BRI served Mauro with a "Notice to Pay Rent or Quit" dated March 10, 2006. In response, Mauro sent BRI a letter stating that rent for the lower level should be permanently abated and filed a complaint for declaratory relief, seeking a declaration that he could abandon the lower level of the building and obtain a pro rata reduction in rent. BRI filed a counterclaim, seeking, inter alia, dismissal of Mauro's complaint, an order declaring that Mauro was obligated to pay BRI an additional $3,500 rent

[1] Mauro signed as an individual and as president of Giuseppe's Italian Restaurant, Inc.

beginning March 1, 2006, and a judgment for past due rent. BRI subsequently filed a motion for declaratory judgment, seeking the relief requested in the counterclaim. The court granted the motion and awarded BRI attorney fees and costs.[2]

Standard of Review

The order Mauro appeals is an order granting BRI's motion for declaratory judgment. While BRI's motion was styled as a request for declaratory relief rather than summary judgment, the trial court did not conduct a trial on affidavits,[3] and the parties agree that the proper standard of review is that for summary judgment.[4] We therefore review under the CR 56 standard, engaging in the same inquiry as the trial court.[5]

We review orders granting summary judgment de novo. We view the facts and all reasonable inferences in the light most favorable to the nonmoving party.[6] Summary judgment is proper if a written contract, viewed in light of the parties' objective manifestations, has only one reasonable meaning.[7] Disputed issues of fact need not prevent the entering of a summary judgment where all of the alleged issues of material fact would not change the legal significance of the language used in a contract.[8]

An award of attorney fees is left to the trial court's discretion and will not be

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[2] Mauro filed several subsequent motions, including a motion to reconsider and a motion to stay enforcement of the judgment which the court denied.

[3] See, e.g., Brouillet v. Cowles Publ'g Co., 114 Wn.2d 788, 791 P.2d 526 (1990).

[4] BRI conceded this at oral argument.

[5] Wm. Dickson Co. v. Pierce County, 128 Wn. App. 488, 492, 116 P.3d 409 (2005).

[6] Vallandigham v. Clover Park Sch. Dist. No. 400, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

[7] Go2Net, Inc. v. C I Host, Inc., 115 Wn. App. 73, 83, 60 P.3d 1245 (2003).

[8] Gwinn v. Chuch of the Nazarene, 66 Wn.2d 838, 846, 405 P.2d 602 (1965).

disturbed absent a clear showing of abuse of discretion.[9] The trial court abuses its discretion only when the exercise of its discretion is manifestly unreasonable.[10]

Discussion

Leases are contracts as well as conveyances, and the rules of construction that apply to contracts also apply to them.[11] In interpreting a contract, the goal is to carry out the intent of the parties as manifested, if possible, by the parties' own contract language.[12]

Washington follows the objective manifestation theory of contracts, whereby we interpret what was written, not what was intended to be written.[13] Surrounding circumstances and other extrinsic evidence may be used to determine the meaning of specific words and terms used, but not to show an intention independent of the instrument or to vary, contradict, or modify the written words.[14]

Under this approach, we attempt to determine the parties' intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties, imputing an intention corresponding to the reasonable meaning of the words used.[15]

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[9] Fluke Capital & Mgmt. Servs. Co. v. Richmond, 106 Wn.2d 614, 625, 724 P.2d 356 (1986).

[10] Rettkowski v. Dep't of Ecology, 128 Wn.2d 508, 519, 910 P.2d 462 (1996).

[11] Seattle-First Nat'l Bank v. Westlake Park Assocs., 42 Wn. App. 269, 272, 711 P.2d 361 (1985),

[12] Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503-04, 115 P.3d 262 (2005).

[13] Hearst, 154 Wn.2d at 503-04.

[14] Hearst, 154 Wn.2d at 503 (quoting Hollis v. Garwall, Inc., 137 Wn.2d 683, 695-96, 974 P.2d 836 (1999)).

[15] Hearst, 154 Wn.2d at 503.

Mauro alleges, inter alia, that BRI caused delays, failed to complete work on the main floor in a timely manner, incurred cost overruns, and failed to make necessary improvements, thus excusing him from paying the full amount of rent due under the lease. However, Mauro's briefing does not discuss the following limitation of remedies provision contained in the parties' lease:

> In no event shall Tenant have the right to terminate this Lease as a result of Landlord's default and Tenant's remedies shall be limited to damages and/or an injunction; and in no case may the Tenant withhold rent or claim a set-off from rent.

The lease additionally provides that "there shall be no abatement of rent, and no liability of Landlord, due to any injury or interference with Tenant's business arising from Landlord's performance of any maintenance or repair which it is required or permitted to perform."[16]

Two exceptions in the lease provide a limited possibility for rent abatement.

Paragraph 17.1 specifies events constituting a default and breach of the lease by the tenant. One such event is the "vacating or abandonment of the Premises by Tenant (applicable only to the ground floor space in which event rent shall be reduced pro rata)." Below, Mauro conceded that "ground floor" referred to the main level, not the basement, and that ¶17.1(a) had no application to his argument.

[16] The only exception to this section is Section 14 which deals with reconstruction after a fire or similar event.

Paragraph 4.2 provides that

> [i]f Landlord, for any reason, cannot deliver possession of the Premises to Tenant upon the Commencement Date, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting from the delay, but there shall be a rent abatement covering the period between the Commencement Date and the time the Landlord delivers possession to tenant, and all of the terms and conditions of this Lease shall remain in full force and effect.

The lease then provides that if the landlord does not deliver possession within 60 days after the commencement date, the tenant may, at its option, cancel the lease by written notice delivered to landlord within 10 business days immediately succeeding the final day of the delivery period.

> If Tenant does not deliver such written notice to Landlord, within that ten (10) business days, Tenant's right to cancel this Lease will terminate and be of no further force or effect, and the terms and conditions of this Lease will remain in full force and effect, except that Tenant's rent abatement shall continue until the time Landlord delivers possession of the Premises to Tenant.

Mauro does not assert that he attempted to cancel the lease according to this provision, nor does the record show any such attempt. Indeed, he does not refer to this section of the lease at all. Instead, he argues that he did not, as a matter of law, accept possession of the lower level space. To support this position, he claims to have leased two separate properties and to have only accepted possession of the one occupied by the main restaurant.

The lease defines the premises as the "leased portion of the property as shown and/or legally described on attached Exhibit A." Exhibit A is titled "Map of Premises and/or Legal Description." It shows the existing floor plans for two stories of the

building in question. One floor plan is labeled First Story Plan, and the other is labeled Basement Floor Plan. The premises are further described as being "a part of the building which is situated at the Building Address as set out in Section 1.2."

Paragraph 1.9, titled "Rent," describes the two stories as Phase One/Main Floor Restaurant and Phase Two/Lower Level Restaurant-Night Club.

In his reply brief, Mauro relies largely on the argument that the word "premises" as used in the lease and by BRI in its response is a plural word, and thus the two floors are separate properties under the lease. Under Mauro's interpretation, the word "premise" would refer to a single property and "premises" to multiple properties.

The words used in a contract should be given their ordinary meaning unless the contract clearly demonstrates a contrary intent.[17] "Ordinary meaning" is considered to be the dictionary definition of the word.[18] "Premises" are a house or building, along with its grounds, as in "smoking is not allowed on these premises."[19] Webster's Dictionary defines "premises" as "the place of business of an enterprise or institution."[20]

The word "premise" is defined, not in terms of property, but as a "previous statement or contention from which a conclusion is deduced"[21] or something assumed or taken for granted.[22] There is no support for Mauro's argument that the word

[17] Universal/Land Constr. Co. v. City of Spokane, 49 Wn. App. 634, 637, 745 P.2d 53 (1987).

[18] Nationwide Mut. Ins. Co. v. Hayles, Inc., 136 Wn. App. 531, 537, 150 P.3d 589 (2007).

[19] Black's Law Dictionary 1199 (7th ed. 1999).

[20] Webster's Third New International Dictionary 1789 (1966).

[21] Black's Law Dictionary at 1199.

[22] Webster's at 1789.

"premises" in the lease refers to anything other than a single "place of business of an enterprise." His argument that "premises" is inherently plural is strained. A contract should not be given a strained or forced construction which would lead to an extension or restriction of the contract beyond what is fairly within its terms.[23]

Paragraph 1.9, cited above, in no way purports to describe the two floors as separate lease entities. Rather, it provides for different dates on which rent will become due for the restaurant level and the nightclub level. Exhibit A, which describes the premises, plainly shows both the upper and lower levels of the building.

The terms of the lease clearly contemplate that both floors are included as "the Premises" and are not considered separate entities.

The commencement date of the lease was "Upon occupancy by Tenant, on or before May 1, 2005." Mauro received the key to the premises and began renovation in April 2005.

Mauro argues that accepting delivery of a restaurant key and commencing remodeling do not constitute delivery. In support of that proposition he cites to Vellias v. Fifth-Pike Corp.[24] While the Vellias court did note that the tenant received the key away from the premises in question, the relevant holding was that the lessor did not have actual possession of the premises and had no right to deliver it. The Vellias case thus has no relevance here where BRI had the undisputed right to lease the premises, the premises consisted of both the upper and lower level, and Mauro received the key,

[23] Woo v. Fireman's Fund Ins. Co., 161 Wn.2d 43, 76, 164 P.3d 454 (2007).
[24] 172 Wash. 319, 20 P.2d 14 (1933).

commenced remodeling in April, and opened the restaurant in October 2005.

The alleged issues of material fact regarding BRI's failure to perform are matters that do not change the legal significance of the language of the lease.[25]

Under the terms of the lease, Mauro's remedies are limited to damages and/or an injunction, and he is barred from withholding rent or claiming a setoff from rent. The trial court correctly decided that BRI was entitled to rent for the basement space commencing March 1, 2006.

Attorney Fees

Mauro claims that the trial court abused its discretion in awarding BRI $37,103.00 in attorney fees, noting that the amount awarded is far in excess of the $8,096.00 billed by his attorneys. He relies on a declaration by Kathryn E. Berger, an attorney in private practice in Bellingham, who reviewed the BRI billings on Mauro's behalf. Berger declared that the fees were excessive, that the work performed by BRI's counsel could have been performed in less than 40 hours, and that the work was partially duplicative and unrelated to the declaratory judgment action.

Nothing in the record, or in Mauro's briefing, persuades this court that the trial court abused its discretion in awarding BRI attorney fees in the amount it did.

Attorney Fess on Appeal

We grant BRI's request for attorney fees on appeal pursuant to RAP 18.1 and the terms of the lease.

[25] Gwinn, 66 Wn.2d at 846.

Conclusion

The judgments of the court below are affirmed.

Leach, J.

WE CONCUR:

Dwyer, A.C.J.

Appelwick, J.